

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

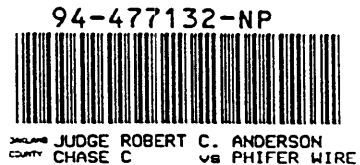
CAROLE M. CHASE, as Next Friend
of BRIAN JOSEPH CHASE, a Minor,
CAROLE M. CHASE, as Next Friend
of KATHRYN ELLENORE CHASE, a Minor,
CAROLE M. CHASE and KEVIN CHASE,

Plaintiffs,

-vs-

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DEPT

C.A. No



PHIFER WIRE PRODUCTS, INC., an
Alabama corporation, and
WEATHERVANE WINDOW, INC., a
Michigan corporation, Jointly
and Severally,

Defendants.

ERLICH, ROSEN & BARTNICK, P.C.
BY: J. MARTIN BARTNICK P26528
Attorneys for Plaintiffs
29201 Telegraph Road, Suite 330
Southfield, MI 48034
(810) 356-0999

COMPLAINT

COUNT I

NOW COME the above named Plaintiffs herein, CAROLE CHASE, KEVIN CHASE, CAROLE CHASE, as Next Friend of BRIAN JOSEPH CHASE, a minor, and KATHRYN ELLENORE CHASE, a minor, by and through their attorneys, ERLICH, ROSEN & BARTNICK, P.C., and for their cause of action against the Defendants say as follows:

1. That Plaintiffs, CAROLE M. CHASE, KEVIN CHASE, are residents of the

125

County of Oakland, State of Michigan, and Carole Chase is the mother and next friend of minors Brian Joseph Chase and Kathryn Ellenore Chase.

2. That Defendant, Phifer Wire Products, Inc., is, upon information and belief, an Alabama corporation with its principal place of business in Tuscaloosa, Alabama.

3. That Defendant, Weathervane Window, Inc., is a Michigan corporation with its principal place of business at 4th Court, Brighton, Michigan.

4. That the amount in controversy in this action exceeds this Court's jurisdictional requirement of Ten Thousand (\$10,000.00) Dollars, exclusive of costs, interest and attorney fees.

5. That all Defendants do business in this County or sell property or services within the County of Oakland.

6. That the Plaintiffs' cause of action against Defendant, Phifer Wire Products, Inc., relates to defective and dangerous screens manufactured and/or sold by Phifer Wire Products, Inc.

7. That the Plaintiffs contracted with JAL Properties, Inc., to build a residential property in the City of Clarkston, County of Oakland, which property was substantially completed by approximately July 13, 1989, at which time Plaintiffs, moved into the house.

8. That the house did not have screens installed at the time that the Chase family moved in on approximately July 13, 1989, but JAL Properties represented that screens had been ordered and would be delivered soon.

9. That within a few weeks of the Chase family moving into the house on

126

July 13, 1989, JAL Properties delivered screens to the Plaintiffs, which were purchased by JAL for Plaintiffs from Defendant, Weathervane, Inc., and which used screen that was manufactured by Defendant, Phifer Wire Products, Inc.

10. That after receiving delivery of the screens sold by Defendant Weathervane and manufactured and sold by Defendant Phifer, the Chases installed the screens in their windows.

11. That following installation of the screens, the entire Chase family, including but not limited to Carole Chase, her minor sons Brain and Joseph, and Kevin Chase, started suffering from various illnesses, including upper respiratory problems, all of which were later discovered to have been caused by the screens.

12. That the screens were discovered to have been the source of the numerous problems suffered by the Chase family during October, 1991, at which time they were removed at the direction of the local fire department, who had been to the home in an attempt to discover the source of the maladies suffered by the Chase family.

13. That during approximately January, 1988, Defendant, Phifer Wire Products, Inc., changed the plastisol stabilizer used in its screens and, in doing so, failed to put enough pigment into the silver gray screening (the type ultimately purchased by the Chases), which resulted in the rapid deterioration of the material when exposed to direct sunlight.

14. That no later than the end of 1988 or the beginning of 1989, Defendant Phifer had discovered its mistake as a result of numerous product failures and, during the summer of 1988, improved the plastisol formula in its screens.

127

15. That because of the defects in the screens purchased by the Chases, the screens deteriorated and the chemical coatings on the screens were released into the environment of the house when exposed to direct sunlight, which caused numerous toxins to be inhaled continually by the Chase family.

16. That as a direct and proximate result of having been exposed to the toxins, the Chase family suffered numerous medical problems, including but not limited to continuous upper respiratory infections, skin diseases and maladies, of which have caused permanent and progressing injuries.

17. That as a direct and proximate result of having been exposed to the toxins in the screens, the Chase family members have incurred pain, suffering, disability and mental anguish, and will in the future suffer pain, suffering, disability and mental anguish, to-wit: permanently.

18. That as a direct and proximate result of having been exposed to the toxins, the Chase family has suffer numerous medical expenses and hereby claim damages for same.

19. That as a direct and proximate result of having been exposed to the toxins, the Chase family has suffered wage loss and hereby claims damages for same.

COUNT I - BREACH OF WARRANTY,
PHIFER WIRE PRODUCTS, INC.

20. Plaintiffs incorporate by reference as though fully set forth herein each and every allegation contained in the foregoing paragraphs of Plaintiffs' Complaint.

21. That the screens were designed, produced, sold and/or manufactured by Defendant, Phifer Wire Products, Inc.

123

22. That the screens were defective at the time they left the control of Defendant Phifer because they were not reasonably fit for their intended and ordinary use.

23. That Defendant Phifer is a company which deals in goods of the kind (screens) or otherwise holds itself out as having knowledge and skill particular to wire products, including screens.

24. That pursuant to MCL 440.2304, Defendant Phifer impliedly warranted that the screens were merchantable.

25. That for goods to be merchantable, they must be at least such as to be fit for the ordinary purpose for which such goods are used; run within variations permitted by the agreement of even kind, quality, and quantity within each unit and among all units involved; and be adequately contained, packaged, and labeled.

26. That Defendant Phifer breached the implied warranty of merchantability because the subject screens were not fit for their intended purpose, failed to run within the variations permitted by the agreement of even kind and quality among the units sold, and/or were not adequately contained, packaged, or labeled inasmuch as they did not warn of the health hazards when exposed to direct sunlight.

27. That Defendant Phifer knew or should have known that use for the intended purpose of such goods would result in the screens being exposed to direct sunlight when the windows were open.

28. That as a direct and proximate result of the Defendant's breach of the implied warranties, as stated above, the Plaintiffs suffered damages and injuries, including pain and suffering, severe emotional distress, shock, mortification,

129

humiliation, and medical expenses, and will continue to suffer damages in the future.

WHEREFORE Plaintiffs respectfully request that this Honorable enter judgment against Phifer Wire Products, Inc., in a sum that this Court or jury deems to be fair and reasonable, plus interest, costs, and attorney fees.

COUNT II - NEGLIGENCE OF DEFENDANT.
PHIFER WIRE PRODUCTS, INC.

29. Plaintiffs incorporate by reference as through fully set forth herein each and every allegation contained in the foregoing paragraphs of Plaintiffs' Complaint.

30. That Defendant Phifer owed a duty to the Plaintiffs to use that degree of care and prudence that a reasonable person/manufacturer would use in producing, selling, and labeling the product.

31. That Defendant Phifer breached the aforementioned duty by negligently using a plastisol stabilizer with insufficient pigment in it, such that it would deteriorate when exposed to direct sunlight, causing the release of toxins into the environment; failing to warn of the potential hazards of the product when exposed to direct sunlight; using toxins in the screens; using chemicals with dangerous or unknown effects on human beings in the screens it manufactured and sold; failing to recall the screens after being put on actual or constructive notice their potential to cause injury or damage; failing to notify the Plaintiff of dangers associated with the screens after discovered by Defendant; and other acts of negligence that may be discovered in the course of this litigation.

32. That as a direct and proximate result of the negligence and gross negligence of Defendant Phifer, the Plaintiffs have suffered injuries as heretofore

136

alleged.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment against Phifer Wire Products, Inc. in a sum that this Court or jury deems to be fair and reasonable, plus interest, costs, and attorney fees.

**COUNT III - BREACH OF WARRANTY OF
DEFENDANT, WEATHERVANE, INC.**

33. Plaintiffs incorporate by reference as through fully set forth herein each and every allegation contained in the foregoing paragraphs of Plaintiffs' Complaint.

34. That Defendant Weathervane was the retailer which sold the screens to the Plaintiff through the builder JAL.

35. That the subject screens were defective at the time they left the control of Weathervane, the retailer.

36. That Defendant Weathervane is the company that deals in goods of the kind (screens) or otherwise holds itself out as having knowledge and skill in household products, particularly windows and screens.

37. That pursuant to MCL 440.2304, Defendant Weathervane impliedly warranted that the screens were merchantable.

38. That in order for goods to be merchantable, they must be at least such as to be fit for the ordinary purpose for which such goods are used and be adequately contained, packaged, and labeled.

39. That Defendant Weathervane breached the implied warranty of merchantability because the subject screens were not fit for their ordinary purpose and were not adequately contained, packaged, and labeled insofar as they did not

131

warn of the dangerous propensities of the screens when exposed to direct sunlight.

40. That pursuant to MCL 440.2315, where the seller, at the time of contracting, has reason to know of any particular purpose for which the goods are required and the buyers rely on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified under the terms of the Uniform Commercial Code, an implied warranty that the goods shall be fit for such purpose.

41. That Defendant Weathervane knew or should have known that the screens were to have been used for a residential property.

42. That Defendant Weathervane breached the implied warranty of fitness for a particular purpose by failing to provide screens that were reasonably fit for their intended purpose, namely use in a residential home where they would be exposed to direct sunlight.

43. That as a direct and proximate result of the Defendant's breach of implied warranties (merchantability and fitness for a particular purpose), as stated above, Plaintiffs suffered damages and injuries, including those previously set forth.

WHEREFORE Plaintiffs respectfully request that this Honorable Court enter judgment against Phifer Wire Products, Inc. in a sum that this Court or jury deems to be fair and reasonable, plus interest, costs, and attorney fees.

ERLICH, ROSEN & BARTNICK, P.C.


BY: J. MARTIN BARTNICK P26528

Attorney for Plaintiff(s)
29201 Telegraph Road, Suite 330
Southfield, Michigan 48034
(810) 356-0999

Dated: May 12, 1994

132

94-488678-NP



JUDGE ROBERT L. TEMPLIN
KELLEY LISA vs PHIFER WIRE

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF

LISA KELLEY and
ROBERT KELLEY,

Plaintiffs,

vs.

94-

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PHIFER WIRE PRODUCTS, INC., an
Alabama corporation, and
WEATHERVANE WINDOW, INC., a
Michigan corporation, Jointly
and Severally,

Defendants.

BARRY S. SIGMAN (P27885)
Attorney for Plaintiff
30800 Telegraph Road, #2985
Bingham Farms, Michigan 48025
(810) 540-3166

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THERE IS NO OTHER PENDING OR
RESOLVED CIVIL ACTION ARISING OUT OF
THE TRANSACTION OR OCCURRENCE
ALLEGED IN THE COMPLAINT

COMPLAINT

NOW COMES the Plaintiffs herein, LISA KELLEY and ROBERT
KELLEY, by and through their attorney, BARRY S. SIGMAN, and for
their cause of action against the Defendants herein say unto this
Honorable Court as follows:

1. Plaintiffs are residents of Clarkston, County of Oakland,
State of Michigan; further, the causes of action hereinafter
alleged arose in Oakland County, Michigan.

133

2. Defendant Phifer Wire Products, Inc. is, upon information and belief, a corporation chartered under the laws of Alabama, but transacting business and selling goods in Oakland County, Michigan.

3. Defendant Weathervane Window, Inc. is a Michigan corporation which transacts business and sells goods in Oakland County, Michigan.

4. The amount in controversy in this litigation exceeds \$10,000, exclusive of costs, interest, or attorney fees.

5. In or about December, 1989, the Plaintiffs moved into their home at 6600 Sun Valley Drive, Clarkston, Michigan.

6. Defendant Weathervane Window, Inc. had supplied and installed in such home certain windows, such windows having been assembled and/or manufactured by Defendant Weathervane Window, Inc. and containing screens designed and manufactured by Defendant Phifer Wire Products, Inc.

7. That the aforementioned screens were defective and dangerous in that the plastisol stabilizer utilized by Defendant Phifer Wire Products, Inc. contained insufficient pigment to prevent the rapid deterioration of the material when exposed to direct light, and that the chemical coating on the screens was released into the environment of Plaintiffs' house causing Plaintiff Lisa Kelley to continually inhale toxins from the screens.

8. That, as a direct and proximate result of her exposure to the toxins from the screens, the Plaintiff Lisa Kelley was caused to become injured and to suffer sinus headaches and infections,

rheumatologic disorder, pain, paresthesia and swelling of the joints, photo-sensitivity, chronic fatigue, autoimmune disease, multiple chemical sensitivity syndrome, osteoarthritis and associated illness, disease and disorder.

9. That, by reason of the premises, Plaintiff Lisa Kelley has suffered and will suffer bodily pain and suffering, shock, mortification, mental anguish, disability, and interference with and inability to engage in her normal occupational, social, and recreational pursuits, as she has suffered loss or diminishment in the quality and enjoyment of her life.

10. By reason of such illness and disability, Plaintiff Lisa Kelley was caused to discontinue and retire from her profession after 1991, and has been deprived of gains and profits she otherwise would have acquired had she not been so injured, and she will be likewise deprived in the future.

11. That by reason of the premises, Plaintiff Lisa Kelley has been caused to incur and expend great sums as medical expenses, in and about the cure and alleviation of her sufferings, and she will be caused like damage in the future.

12. That Plaintiff Lisa Kelley discovered that the defective screens were the cause of her illness and injury in the summer of 1992, when she learned that certain of her neighbors had suffered illness and injury due to exposure to windows and screens furnished by these Defendants, and that Plaintiff Lisa Kelley had such screens removed from her home upon such discovery.

COUNT I - BREACH OF WARRANTY

13. Plaintiff-adopts and incorporates by reference each and every allegation of the preceding paragraphs of Plaintiff's Complaint as if specifically repeated and set forth herein.

14. That the aforementioned windows were sold, manufactured and/or assembled by Defendant Weathervane Window, Inc. and contained screens manufactured and designed by Defendant Phifer Wire Products, Inc.

15. That Defendant Weathervane Window, Inc. and Defendant Phifer Wire Products, Inc. are merchants with respect to goods of that kind, and such Defendants did, pursuant to MCL 440.2314, impliedly warrant that such windows and screens were merchantable.

16. That such screens were defective at the time they left the control of Defendant Phifer Wire Products, Inc., and that such windows in turn were defective when they left the control of Defendant Weathervane Window, Inc.

17. Defendant Phifer Wire Products, Inc. and Defendant Weathervane Window, Inc. did breach such warranty of merchantability because the screens and windows were not fit for the ordinary purpose for which such goods are used, were not adequately contained, packaged, or labeled, as they did not warn that such screens deteriorated and emitted toxins when exposed to sunlight.

18. Defendant Phifer Wire Products, Inc. and Defendant Weathervane Window, Inc. knew or had reason to know of the particular purpose for which such goods were required and that such